where human life and health were not endangered, and the loss was of *property* only. But in *French v. Vining*, 102 Mass. 132 (3 Am. Rep. 440), the defendant was held liable for the death of the plaintiff's cow from eating hay on which white-lead paint had been spilled, the defendant being aware of the fact. But here the action was in *tort* for alleged deceit, and the case does not seem in conflict with *Lukens v. Freiund, supra*, though it is so considered in note to 73 Am. Dec. 168.

As to *criminal* liability for selling unsound provisions, Code of Virginia, sec. 3811, enacts: "If any person *knowingly* sells any diseased, corrupted, or unwholesome provisions, whether meat or drink, without making the same known to the buyer, he shall be confined in jail not exceeding six months, and fined not exceeding $100." The West Virginia statute is substantially the same. Code W. Va., ch. 150, sec. 19.

LIABILITY OF AGENT FOR WRONGS COMMITTED BY PRINCIPAL'S ORDERS.—While the command of the principal is always a sufficient justification of the agent as between him and his principal, yet the agency will never excuse the commission of a wrong against strangers. The principal cannot confer upon the agent authority to commit a tort upon the right or property of another; and, although the agent act in absolute good faith, he will nevertheless be liable, along with the master, for the consequence of any trespass so committed. True, the principal must indemnify the innocent agent, but this in nowise exempts the agent from liability to strangers.

Thus it was held that an agent, whose principal had committed a secret act of bankruptcy in England, without the agent's knowledge, was liable for the value of the principal's effects, subsequently transmitted by the agent to the principal in the United States: *Stephens v. Elwall*, 4 Mau. & Selw. 259; so of an agent who sold certain bonds for his principal, without notice of the title of a third person: *Kimball v. Billings*, 55 Me. 147 (92 Am. Dec. 581); and an agent who purchased slaves at a sheriff's sale, in the name of his principal, to whom he at once delivered them, was held liable to a third person, the real owner, for their conversion: *Lee v. Mathews*, 10 Ala. 682 (44 Am. Dec. 498); an auctioneer who, in good faith and without notice of a recorded mortgage, sells mortgaged chattels, paying over the proceeds to the mortgagor, is liable to the mortgagee for their value: *Spraights v. Hawley*, 39 N. Y. 441 (100 Am. Dec. 452); *Robinson v. Bird*, 158 Mass. 357 (35 Am. St. Rep. 495); *Marks v. Robinson*, 82 Ala. 69; *Merchants etc. Bank v. Meyer*, 56 Ark. 499; *Coles v. Clark*, 3 Cush. (Mass.) 399; so where an agent, on the authority of his principal, disposed of certain goods belonging to a third person, the circumstance that the agent acted innocently was held no defense to an action against him for conversion of the goods: *Everett v. Coffin*, 6 Wend. 603 (22 Am. Dec. 551); and a stock-broker who sells stolen certificates of stock, paying over the proceeds to the thief, is liable to the true owner for their value; nor is it a valid defense that the broker acted in good faith, in ignorance of the true owner's title: *Swim v. Wilson*, 90 Cal. 126 (25 Am. St. Rep. 110); so of an auctioneer selling goods to which his principal has not title: *Kearney v. Clutton*, 101 Mich. 106 (45 Am. St. Rep. 394). See, also, note to *Baird v. Shipman* (Ills.), 22 Am. St. Rep. 508, 514; *Johnson v Barber*, 5 Gilm. 425 (50 Am. Dec. 416); *Velsian v. Lewis*, 15 Oregon, 539 (3 Am. St. Rep. 184); *Hollins v. Fowler*, L. R. 7 Q. B. 616,

affirmed in L. R. 7 H. L. 757; *Allen v. Hartfield*, 76 Ill. 358; *McPheters v. Page*, 83 Me. 234 (23 Am. St. Rep. 772); *Koch v. Branch*, 44 Mo. 542 (100 Am. Dec. 324); *Fort v. Wells*, (Ind.) 43 N. E. 155; Mechem on Agency, 573; 1 Am. and Eng. Enc. Law (2d ed.), 1133, 1135.

The general proposition that one who intermeddles with the goods of another cannot justify the trespass by alleging his own good faith and avouching the authority of another who has no authority, while it may be regarded as settled law, both in England and America, has yet been dissented from in a few cases.

Thus the Virginia Court of Appeals held in *Travis v. Claiborne*, 5 Munf. 435, that a negro-trader who, by direction of the owner, had sold certain slaves on which there was a duly recorded mortgage, and who had paid over the proceeds to the owner without actual notice of the mortgage, was not liable to the mortgagee for the conversion of the slaves. The decision was placed upon the ground that "where the conduct of the agent is within the limits of the authority confided to him; is fair, and unattended by circumstances sufficient to apprize him that he is acting wrongfully in relation to others; or, in other words, where he does not commit an *apparent* wrong, the principal, and not the agent, is responsible" (p. 438). The opinion rests upon *Mires v. Solebay*, 2 Mod. 242, as authority—a case which is no longer authority in England, and which seems never to have received other countenance from the American courts. *Travis v. Claiborne* was ignored and virtually overruled in the later Virginia case of *Newsum v. Newsum*, 1 Leigh, 86, where an administrator was held liable, in trover, for the proceeds of a chattel sold by him, in good faith, as the property of his intestate, but which in truth belonged to another. The case is also criticised by Mr. Conway Robinson in 3 Rob. Pract. (New), 73–4.

The only American authority we have been able to find sustaining the principle of *Travis v. Claiborne* is a line of Tennessee cases. There the doctrine seems to be established that in order to hold an agent liable for conversion of the goods of third persons, by direction of his principal, he must have had notice of the adverse claim before payment of the proceeds over to his principal: *Roach v. Turk*, 9 Heisk. 708 (24 Am. Rep. 360); *Frizzell v. Rundle*, 88 Tenn. 396 (17 Am. St. Rep. 908); though these cases seem to conflict with a previous decision by the same court, in *Taylor v. Pope*, 5 Caldwell, 413. Nor does the Tennessee court appear to have noticed the drift of authority beyond the borders of its own State.